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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,222	02/26/2002	Bernd Gigas	87335.3600	6436

30734 7590 08/27/2003

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EXAMINER

CECIL, TERRY K

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/082,222	Applicant(s) GIGAS ET AL.	
	Examiner Mr. Terry K. Cecil	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

P riod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>0703</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1, 6 and 18 are objected to because of the following informalities:
 - The preamble of claim 1 should be changed to “An impeller” to properly coincide with the preambles of the claims which depend from claim 1.
 - Claim 6, line 7, “a” should be removed, i.e. “at least two ~~a~~ connector elements”.
 - The preamble of claim 18 should be changed to “A method according to claim 16” to properly coincide with the preamble of its parent claim 16”.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7-9, 15 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite because of the following reasons:
 - The following terms lack antecedent basis: “the inner blade portions” (claims 7 and 9); “the outer blade portions” (claims 7 and 8; Did applicant intend for claims 7-9 to depend from claim 6 instead of claim 1?); “the connector” (claim 15, line 1; Did applicant intend to claim “wherein said means for providing radial spacing between respective inner and outer blade portions is a cylindrical rod”?); “the second blade portion” (claim 18; Did applicant intend to claim “the second blade”?); “the first and second portions” (claim 19; Did applicant intend to claim “the first and second blades”?); “the connector” (claim 20).

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- Claim 17 is unclear since a method is not claimed in claim 1. Did applicant intend claim 17 to depend from claim 16?

Double Patenting

4. Applicant is advised that should claim 5 be found allowable, claim 10 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). (Did applicant intend for claim 10 to depend from claim 6 instead of claim 1?)

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 6-9, 11-14 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by the German Reference (DE 1,101,113), hereinafter “ ‘113”. As shown in figure 2, ‘113 discloses an impeller that includes a plurality of twisted inner and outer blades radially-spaced by connector elements 3 [as in claims 1-4, 6-9, 11-14 and 17-19], wherein the blade portions of the impeller are used to move the material in opposite directions in a mixing vessel [as in claim 16].

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 5, 10 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over '113 in view of knowledge of the skilled man or in view of Tielens et al. (U.S. 4,238,159). '113 has been expanded above and also teaches a connecting rod 3. '113 does not specifically disclose a *cylindrical* connecting rod, however, the examiner contends that the shape of the rod is a matter of design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Also a cylindrical connecting rod is known in the art of Tielens (see e.g. figure 5, element "96") [as in claims 5, 10 and 20]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the connecting rod of '113 to be cylindrical, as in Tielens, since Tielens teaches such be to an equivalent shape for connecting mixing

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elements that are opposite in pitch (elements 102 and 104 move the material in opposite directions).

9. Contact Information:

- Examiner Mr. Terry K. Cecil can be reached at (703)305-0079 for any inquiries concerning this communication or earlier communications from the examiner.
Note that the examiner is on the increased flextime schedule but can normally be found in the office during the hours of 8:00a to 4:30p, on at least four days during the week M-F.
- The group receptionist can be reached at (703)308-0661 for inquiries of a general nature or those relating to the status of this or proceeding applications.
- Wanda Walker, the examiner's supervisor, can be reached at (703)308-0457 if attempts to reach the examiner are unsuccessful.
- The Fax number for this art unit for official faxes is 703-872-9306.



Mr. Terry K. Cecil
Examiner
Art Unit 1723

TKC
August 25, 2003